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MANAGEMENT BULLETIN

SUBJECT	ADMINISTRATIVE MANUAL REFERENCE	APPROVED BY
Discrimination Complaint Procedures	07300, 07400, 07500, and 07600	CHIEF DEPUTY

Supersedes Management Bulletin 98-05

The purpose of this management bulletin is to convey the Department's zero tolerance discrimination policy and the uniform procedures to be used by Department of Justice (DOJ) job applicants and employees when reporting allegations of discrimination, and harassment. Related Management Bulletins: Reasonable Accommodation and Sexual Harassment in the Workplace.

LEGISLATIVE INTENT

There have been longstanding constitutional protections afforded to U.S. citizens in the area of equal treatment. A 1984 amendment to the Fair Employment and Housing Act via Chapter 1754 underscored California public policy on the enforcement of anti-discrimination laws. It states "*The Legislature finds and declares that it is the existing policy of the State of California to prohibit harassment and discrimination in employment on the basis of any protected classification. Such conduct whether intentional or unintentional is a violation of the civil rights of California citizenry and has been shown to decrease productivity in the workforce. It is the existing policy of the State of California, as declared by the Legislature, that procedures be established by which allegations of prohibited harassment and discrimination may be filed, timely and efficiently investigated, and fairly adjudicated, and that agencies and employers be required to establish affirmative programs which include prompt and remedial internal procedures and monitoring so that work sites will be maintained free from prohibited harassment and discrimination by their agents, administrators, and supervisors as well as by their non supervisors and clientele . . .*"

ZERO TOLERANCE POLICY

It is the policy of the DOJ to provide equal employment opportunities to all employees and applicants for employment on the basis of merit and to prevent harassment, discrimination and retaliation in the workplace. Professional conduct and respect for others are required without regard to classification, job title or function. Any

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ZERO TOLERANCE POLICY (Continued)

exclusionary practice, discrimination or harassment will not be tolerated. Such behavior will be addressed seriously and corrective action will be taken. Because the DOJ “zero tolerance” policy is aimed at preventing unlawful behavior, corrective action or discipline may be taken even where policy violations are not so egregious as to be unlawful.

Whenever possible, the Department takes steps to end discriminatory behavior by responding to complaints immediately when they are reported. The Department’s discrimination complaint process is coordinated by the Affirmative Action/Equal Employment Opportunity Office (AA/EEOO).

Employees’ Responsibilities

Each employee has an obligation to assist in the prevention of discrimination in the workplace. Employees should understand that individual responsibility is critical. Employees should know the policy. Employees must contribute to creating a non-hostile work environment by not taking part in behavior or acts which violate the Department’s policy. Employees must not discuss any aspect of a complaint with anyone other than their representative, AA/EEOO staff, assigned counselor, investigator, or their management on a need to know basis. Employees should report policy violations and be part of the solution instead of the problem.

Manager and Supervisor Responsibilities

Managers and Supervisors set the tone in the work unit. They are expected to know the discrimination policy. They should exhibit professional conduct on a daily basis. Individual conduct must also conform with the policy on and off the job. They are expected to be open and accepting of others and courteous to all staff. They must be aware of situations which could lead to a complaint or result in a violation of the Department’s policy and attempt to resolve the matter. This proactive approach prevents such situations from escalating into a violation of the Department’s policy and occurs before a complaint is filed. Managers and Supervisors must be willing to immediately confront issues and stop activities. Those who cannot will be subject to demotion. Additionally, in appropriate cases, those found to have violated the policy may not receive defense counsel if litigation is pursued.

Managers and Supervisors should take heed that romantic relationships with employees in lower classifications which are initially consensual may progress into an allegation of a pattern of unwelcome sexual conduct. An initial consensual relationship will not be looked upon favorably as a defense to conduct that violates the Department’s policy.

ZERO TOLERANCE POLICY (Continued)

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Education and Training

Managers and Supervisors should seek training in this area routinely. Outside sources include, but are not limited to, the State Personnel Board and the State Training Center. The AA/EEEO staff is available to provide technical assistance on implementing the Department's informal and formal filing procedures. Managers and Supervisors are required to discuss this policy with subordinate staff every six months. This will ensure that all employees are educated and know how to report. Written verification that discussions occurred are forwarded to the AA/EEEO under the Division Chief's or Director's signature.

DEFINITION OF DISCRIMINATION

Unlawful discrimination refers to any act, comment, policy, or decision which makes or has the effect of creating a non job-related distinction that results in different treatment among or between persons or groups on the basis of race, color, national origin, ancestry, religion, sex, sexual orientation, pregnancy, marital status, disability, age, political affiliation, family/medical leave or retaliation.

DEFINITION OF PROTECTED CHARACTERISTICS

The laws and rules which prohibit discrimination and grant the Department the authority to conduct an inquiry, provide counseling or investigate a complaint of discrimination arise when one or more of the following are characteristics a basis for the complaint:

Basis

Statute/Act

Race & Color	Title VI and Title VII of the Federal Civil Rights Act of 1964, the Omnibus Crime Control and Safe Streets Act of 1968 as amended, the California Fair Employment and Housing Act (Gov. Code §12940 et. seq.) and Government Code §19700 et. seq., 5th & 14th Amendments to the U.S. Constitution, Article I, Section 31 of the California Constitution.
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National Origin and Ancestry	Title VI and Title VII of the Federal Civil Rights Act of 1964, the Omnibus Crime Control and Safe Streets Act of 1968 as amended, the California Fair Employment and Housing Act (Gov. Code §12940 et. seq.) and Government Code §19700 et. seq., 5th & 14th Amendments to the U.S. Constitution, Article I, Section 31 of the California Constitution.
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DEFINITION OF PROTECTED CHARACTERISTICS (Continued)

Religion/Creed	Title VII of the Federal Civil Rights Act of 1964, the Federal Crime Control Act as amended, the California Fair Employment and Housing Act (Gov. Code §12940 et. seq.) and Government Code §19700 et. seq., 5th & 14th Amendments to U.S. Constitution, Article I, Section 31 of the California Constitution. (Reasonable Accommodation can be
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requested).

Sex and Pregnancy	The Federal Civil Rights Act, Federal Crime Control Act as amended, the California Fair Employment and Housing Act (Gov. Code §12940 et. seq.) and Government Code §19700 et. seq. (The FEHA also refers to Sexual Harassment, Gender Harassment, and Pregnancy Harassment). See also the Pregnancy Act of 1978, the Family and Medical Leave Act & California Family Rights Act (CARA) of 1993 and Government Code §12945 and §19700 et. seq., 5th & 14th Amendments to the U. S. Constitution, Article I, Section 31 of the California Constitution.
Sexual Orientation	The California Labor Code §1102.1
Marital Status	The California Fair Employment and Housing Act (Gov. Code §12940 et. seq.) and Government Code §19700 et. seq.
Mental/Physical Disability or Medical Condition	The Americans with Disability Act of 1990 (Public Law 101-336), the California Fair Employment and Housing Act (Gov. Code §12940 et. seq.) and Government Code §19700 et. seq. (Reasonable Accommodation can be requested).
Age (over 40)	The Age Discrimination in Employment Act of 1967, the California Fair Employment and Housing Act (Gov. Code §12940 et. seq.) and Government Code §19700 et. seq.
Family/Medical Leave	Title VII of the Federal Civil Rights Act, California Fair Employment and Housing Act (Gov. Code §12940 et. seq.), Family and Medical Leave Act & California Family Rights Act of 1993 and Title II of Government Code §12945.2 and §19702.3.
Retaliation	Title VI and Title VII of the Federal Civil Rights Act of 1964, the Federal Omnibus Crime Control Act of 1968 as amended, Rehabilitation Act of 1973 and Government Code section §12940(f).

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DEPARTMENT GOAL

It is the *goal* of the DOJ through this management bulletin to:

- Provide all employees with laws, rules, regulations and policies pertaining to their rights and responsibilities in the area of discrimination.
- Promote and maintain a nondiscriminatory, harassment-free work environment.
- Allow all employees the opportunity to express their concerns within an approved, uniform filing process.
- Ensure all employees that allegations of discrimination receive prompt and impartial consideration. However, confidentiality cannot be guaranteed.
- Ensure the opportunity for complaints to be resolved at the lowest possible organizational levels and;
- Provide management the opportunity to change inappropriate attitudes and practices through education, training and/or corrective action.

DEPARTMENT OF JUSTICE COMPLAINT PROCESS

In accordance with State Personnel Board Policy, departmental employees have two options by which to express their complaints of discrimination. These options are referred to as the Informal/Counseling and the Formal/Investigative Processes. More detailed information about filing requirements is provided in the attached Standard Operating Procedures (SOP). Both avenues are available to employees who wish to seek resolution of discrimination complaint issues.

**Informal/
Counseling
Process**

In the informal process, the employee may contact the AA/EEEO who will assign an EEO Counselor to facilitate resolution of their complaint. Also, a list of designated EEO Counselors can be found on bulletin boards statewide. The counselor submits a written report to the AA/EEEO. This process takes up to 15 days. (See SOP, pages 1 and 2)

Note: *Employees are always free to raise concerns directly with a supervisor or manager to try and resolve the matter.*

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DEPARTMENT OF JUSTICE COMPLAINT PROCESS (Continued)

Formal/Investigative Process The formal/investigative process begins when the complainant files a written prime facie complaint or a Discrimination Complaint Form (JUS 601), with the AA/EEEO. A trained EEO Investigator is assigned and an objective fact finding investigation is conducted. The EEO Investigator submits a complete report to the AA/EEEO. A determination is then made as to whether the Department's discrimination policy was in fact violated. The complainant and subject are notified of the determination which is the Department's final decision. This process takes up to 180 days. (See SOP, page 3)

Within 30 days, following a decision by the Department, employees may file a written appeal of the decision with the California State Personnel Board (SPB).

ADDITIONAL COMPLAINT PROCESS

DFEH/EEOC Employees may file discrimination complaints at any time during the DOJ's informal/counseling or formal/investigative processes with the California Department of Fair Employment and Housing (DFEH) (365-day filing period) or the Federal Equal Employment Opportunity Commission (EEOC) (300-day filing period) in their location.

SPB A discrimination complaint may be filed directly with the SPB when the issues allege retaliation for previously using the discrimination complaint process; the remedy requested is outside the authority of the Department; the circumstances directly concern a Department director or members of the department's executive staff; or the Department exceeded the 180-days period to render a final decision on the complaint. All direct filings of discrimination complaints with the SPB are investigated to determine, if, jurisdiction has been established.

The adverse action process is handled by the DOJ Personnel Office. Charges of discrimination made in connection with an adverse action are generally addressed within that process.

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ADDITIONAL COMPLAINT PROCESS (Continued)

U.S. Department of Justice	Title VI of the Federal Civil Rights Act and the Omnibus Crime Control and Safe Streets Act of 1968 as amended prohibits specified discrimination by agencies which receive Federal financial assistance. As a grant recipient agency, DOJ employees or job applicants may file complaints of discrimination with their nearest U.S. Department of Justice Office of Civil Rights or Civil Rights Division in Washington, D.C.
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DISCLOSURE

This section clarifies what specific information will be disclosed to the complainant, the subject and third parties during the informal/counseling and the formal/investigative discrimination complaint process.

The primary law governing the disclosure of information regarding a discrimination complaint is the Information Practices Act (IPA) of 1977, (Civil Code Section §1798, et seq.). In order to protect the privacy of individuals, the IPA places specific requirements on state agencies in the collection, use, maintenance and dissemination of information relating to individuals. The IPA provides a right of access to individuals, with exceptions, to information about themselves maintained by state agencies.

Other laws that bear on the disclosure of discrimination file records include the Public Records Act (Government Code Section §6254 (c)), Peace Officers Bill of Rights (POBOR) (Government Code Section §3300 through §3309, §3500 through §3510, et seq.), Penal Code Section §832.7) and applicable provisions of collective bargaining agreements.

Informal Counseling Report	If the complaint has led to a formal investigation with a final departmental decision that the policy was violated, an excised copy of the report may be obtained upon written request.
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However, where a Peace Officer is either the complainant, subject or a witness, non peace officers will not receive the report. Only the Peace Officer about whom adverse comments (as determined by legal counsel) have been made is entitled to obtain a copy.

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DISCLOSURE (Continued)

Formal Investigative Report In cases of a finding or a violation of the policy, an excised copy of the formal investigation report can be obtained upon written request, following the final departmental decision by the Chief Deputy Attorney General.

However, where a Peace Officer is either the complainant, subject or a witness, non peace officers will not receive the report. Only the Peace Officer about whom adverse comments (as determined by legal counsel) have been made is entitled to obtain a copy.

EMPLOYEE RIGHTS

Government Code section §19702 (g), or for employees who are peace officers, Government Code section §3303 (g), requires cooperation with the informal/counseling and formal/investigation processes. In doing so employees have the following rights:

1. To file concurrent complaints with the DFEH and EEOC.
2. To have their supervisor or manager take immediate action to stop the alleged discriminatory behavior as soon as reported. (*See SOP, page 2*).
3. To file a complaint and/or cooperate with an investigation without being retaliated against.
4. To receive a thorough, unbiased investigation.
5. To be made whole, if violations occur.
6. To have preventative measures put in place to ensure that violations *will not* reoccur.
7. To withdraw the complaint at any time during the process (*except in cases of sexual harassment*).
8. To have representation of their choosing throughout the process.
9. To receive a copy of their interview tape.
10. To have their name in the report kept confidential upon request, (does not apply to a supervisor witness).

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EMPLOYEE RIGHTS (Continued)

11. To obtain reports following a final departmental decision that the discrimination policy has been violated, *except*, when a peace officer is the subject.
12. To be shielded from disclosure of information in the reports about them to non Peace Officers when the subject is a peace officer.
13. To receive an *Admonishment* pursuant to Government Code section 3303 (g), for peace officers who refuse to answer questions in an interview.

OTHER ISSUES

Retention	<p>All discrimination complaint files are retained by the AA/EEOO for five years starting from the date the Chief Deputy Attorney General (CDAG) renders the final decision regarding the complaint or the date the file is officially closed.</p> <p>In instances where the informal/counseling process does not result in a formal/investigation process, records will be maintained for five years after the completion of the one-year statute of limitations period for the incident.</p> <p>In instances where an informal complaint leads to a DFEH/EEOC charge or lawsuit, records will not be purged during litigation.</p>
Retaliation	<p>No person shall retaliate against any individual because such individual has opposed a discriminatory act or practice or because such individual made a charge, testified, assisted, or participated in any manner in an informal/counseling or formal/investigation process.</p>

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STANDARD OPERATING PROCEDURES (SOP) - Informal/Counseling Process

RESPONSIBILITY

ACTION

Complainant¹.	Contacts the EEO Office for counselor referral, nearest EEO counselor or an appropriate supervisor*.
EEO Coordinator	2. Assigns an EEO Counselor within seven working days of receipt of complaint.
EEO Counselor	3. If complainant contacts EEO Counselor directly, EEO Counselor immediately notifies EEO Coordinator to advise of complaint status. 4. Meets with complainant, listens to complaint, and determines if complaint meets EEO discrimination jurisdictional requirements, in accordance with the EEO Counselor checklist. a. If within jurisdiction, counselor attempts to resolve complaint. b. Notifies the EEO Coordinator of the complaint issue(s) and advises of manner they will proceed. c. If not within jurisdiction, immediately informs complainant and ends counseling process. 5. Informs complainant of discrimination complaint process, employee rights and responsibilities, required time frames and confidentiality. Provides complainant with a copy of the management bulletin. 6. Informs complainant that in order to effectively seek resolution confidentiality cannot be guaranteed. 7. Gathers sufficient information relevant to the complaint from appropriate parties, facilitates efforts to resolve complaint and keeps AA/EEOO apprised of progress.

*** The supervisor or manager must take appropriate steps to resolve complaint or problem associated with the complaint, if received directly from employee, either verbal or in writing.**

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STANDARD OPERATION PROCEDURES (SOP) - Informal/Counseling Process (Continued)

RESPONSIBILITY

ACTION

EEO Counselor

8. Meets with the complainant and discusses the results of the complaint.

If complaint is resolved:

- a. Sends a follow up closing memo summarizing the complaint to the complainant and the subject within 15 days advising them of complaint resolution.
- b. Sends a copy of closing memo, the completed counseling report and all related materials (summary of interviews, resolution, etc.) to the AA/EEEO within 15 days.

If complaint is not resolved:

- a. Provides a copy of the form JUS 601, Complaint of Discrimination, to complainant.
- b. Advises the complainant of filing options (see pages 4 and 5 of the DCP).
- c. Sends a follow up closing memo to the complainant and the subject summarizing the complaint within 15 days advising them of complaint resolution.
- d. Sends a copy of the counseling closing memo, the completed counseling report and all related materials (summary of interviews, resolution, etc.) to the AA/EEEO within 15 days.

EEO Coordinator

9. Notifies the supervisor/manager of the complaint and advised them whether complaint was resolved or was not resolved. Sends Division Chief/Director an informational copy of the counseling closing memo.
10. Maintains counseling records in accordance with retention guidelines on page eight.

End of Informal/Counseling process.

STANDARD OPERATING PROCEDURES (SOP) - Formal/Investigative Process

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RESPONSIBILITY

ACTION

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|-------------------------|---|
| Complainant | 1. Files a letter or formal written complaint with the AA/EEOO within <u>365 days</u> from the date of the alleged incident. DOJ “Complaint of Discrimination”, JUS 601 form is available for use, but, is not required. |
| AA/CR Director | 2. Reviews the letter or complaint for prima facie and verifies jurisdiction, i.e., basis and issue, standing, coverage and time lines. If <u>not</u> within jurisdiction, immediately informs complainant. If within jurisdiction, proceeds with investigation.

3. Assigns EEO Investigator to the complainant within seven working days.

4. Sends a notice in the form of a letter or memo to the complainant, subject and Division Chief/Director informing them that an investigation will be conducted, including the name of the assigned EEO Investigator. |
| EEO Investigator | 5. Conducts taped interviews with the complainant, subject and appropriate witnesses to obtain statement of facts.

6. Reviews and compares statement of facts, determines what is corroborated and what is in dispute.

7. Determines whether the finding of facts supports the allegation.

8. Prepares a written investigation report summarizing the finding of facts.

9. Submits the investigation report to the AA/EEOO within <u>120 days</u> . |

 **Note: The Department has 180 days to render a final decision.**

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STANDARD OPERATING PROCEDURES (SOP) - Formal/Investigative Process, (Continued)

<u>RESPONSIBILITY</u>	<u>ACTION</u>
AA/CR Director	<p>10. Reviews the EEO Investigator's report and provides a review of the findings of fact.</p> <p>11. Sends the EEO Investigator's report and the AA/CR Director's determination to CDAG with an informational copy to the Division Chief/Director.</p>

In Cases Where There Is a *Finding or Violation of the Policy*:

Division Chief/ Director	<p>1. Reviews the EEO Investigator's report and notifies the CDAG of proposed corrective action(s).</p>
Chief Deputy Attorney General	<p>1. Reviews the Division Chief's/Director's proposed corrective action plan and considers it along with the EEO investigation report. The CDAG may approve, amend or deny the Division Chief's/Director's proposed corrective action.</p> <p>2. Makes the final departmental decision within <u>20 working days</u> of receiving the EEO Investigator's report.</p> <p>3. Sends final departmental decision letter to the complainant, the subject and the Division Chief/Director. The complainant has <u>30 days</u> to appeal to SPB.</p>
Division Chief/ Director	<p>1. Upon notification from the CDAG of the <i><u>final</u></i> Departmental decision:</p> <p>a. Advises the appropriate supervisor/manager (only those who need to know) of the decision.</p> <p>b. Informs the subject of corrective action(s) and ensures implementation.</p> <p>c. Notifies AA/EEOO of the date the corrective action will be implemented.</p>

STANDARD OPERATING PROCEDURES (SOP) - Formal/Investigative Process, (Continued)

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RESPONSIBILITY

ACTION

**Division Chief/
Director**

- 2. Collects the following information within 30 days of the CDAG's notification:**
 - a. Names and title of supervisor/manager in the individual's chain of supervision.**
 - b. Name of supervisor/manager who knew or should have known of the alleged conduct or complaint.**
 - c. Names of supervisor/manager who knew or should have known of alleged conduct or complaint, but, failed to take action.**
 - d. List steps taken by supervisor/manager to stop alleged conduct.**
 - e. List steps taken or plan to take to ensure that the discrimination is not repeated.**

In Cases Where There Is No Finding or *Violation of the Departments Policy*:

**Chief Deputy
Attorney General**

- 1. Reviews the investigation report and the AA/CR Director's recommendations.**
- 2. Renders the *final* departmental decision within 20 working days of receiving the EEO Investigator's report and the AA/CR Director's recommendation.**
- 3. Sends final departmental decision letter to the complaint and the subject with an informational copy to the Division Chief/Director.**
- 4. Informs complainant that they have 30 days in which to appeal to SPB.**

End of Formal/Investigative Process